

1 McGREGOR W. SCOTT
United States Attorney
2 KENNETH J. MELIKIAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, Ca. 95814
4 Telephone: (916) 554-2700

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6
7 IN THE UNITED STATES DISTRICT COURT FOR THE
8 EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,) CR. NO. S-02-469 EJG
) (CA #03-10584)
12 Plaintiff,)
) SUMMARY ORDER
13)
RANDALL WILKIN CHARTIER,)
14)
Defendant.)
15 _____)
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17 Because the Ninth Circuit Court of Appeals had vacated the
18 defendant's previous sentence, and remanded the case to the
19 district court, this case came before the court for a sentencing
20 hearing on February 4, 2005. Plaintiff United States of America
21 was represented by Assistant U.S. Attorney Kenneth J. Melikian.
22 The defendant was represented by Attorney Michael B. Bigelow. The
23 defendant was not present as he was incarcerated at the Federal
24 Correctional Institution in Sheridan, Oregon. The defendant's
25 presence was expressly waived by Mr. Bigelow.

26 The court acknowledged that it had received sentencing
27 memoranda from the defendant and from the government prior to the
28 sentencing hearing.

1 The court observed that application of the Sentencing
2 Guidelines in this case resulted in a guideline range of 41 to 51
3 months in prison. The court further noted, however, that the jury
4 specifically found that the defendant conspired to manufacture at
5 least one hundred marijuana plants, and manufactured at least one
6 hundred marijuana plants, each of which counts was punishable by a
7 statutory mandatory minimum sentence of five years in prison.

8 The defendant posed two objections to imposition of the
9 statutory mandatory minimum sentence. First, he claimed that
10 since the indictment pled the defendant's involvement with one
11 hundred marijuana plants, conversion of this quantity in the Drug
12 Quantity Table resulted in a guideline range of six to twelve
13 months in prison. The court rejected the defendant's argument,
14 concluding that the jury's finding of at least one hundred plants
15 triggered the sixty-month mandatory minimum sentence.

16 In his second objection, the defendant contended that he was
17 safety valve eligible. The defendant argued that the five safety
18 valve criteria can not be determined by the court, but must be
19 admitted by the defendant, or pled and proved beyond a reasonable
20 doubt to a jury. The court rejected this argument, finding that
21 the defendant's position was not supported by United States v.
22 Booker, 125 S.Ct. 738 (2005).

23 After considering the defendant's two objections, the court
24 sentenced the defendant to a term of imprisonment of sixty months
25 on each of Counts One and Two, to be served concurrently for an
26 aggregate total term of sixty months in prison. That prison term
27 was to be followed by a forty-eight month term of supervised

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1 release. The defendant was also ordered to pay a special
2 assessment of \$200.

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4 IT IS SO ORDERED.

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6 DATED: May 19, 2005

/s/ Edward J. Garcia
HONORABLE EDWARD J. GARCIA
U.S. District Court Judge

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